IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9604 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIRECTOR OF CAMPUS - Petitioner(s)

Versus

MOHANLAL D CHAUHAN & 14 - Respondent(s)

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Appearance :

MR DG CHAUHAN for Petitioner(s) : 1,
MR YOGESH S LAKHANI for Respondent(s) : 1,
(MR AD PADIVAL) for Respondent(s) : 1,
None for Respondent(s) : 2 - 15.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/01/2006

ORAL JUDGMENT

1. The petitioner, namely, Director of Campus, Gujarat Agricultural University, has filed this

petition under Articles 226 and 227 of the Constitution of India, praying for quashing and setting aside the award dated 22.10.1992 passed by the Labour Court, Junagadh, in Recovery Application No.118 of 1991 filed by General Secretary, Bhartiya Mazdoor Sangh, Rajkot, whereby the Labour Court has awarded the following amount to the respondents No.1 to 14 :-

Name of Respondents	Amount awarded.
1.Mohanlal Devraj Chauhan	Rs.36,341/-
2.Pravin Vasanji	Rs.96,386/-
3.Sheilesh Natvarlal Vakharia	Rs.79,534/-
4.Maganlal Bhurabhai	Rs.94,500/-
5.Jamal Savdas Chhuchhar	Rs.1,43,455/-
6.Harsukh Kurji	Rs.1,08,366/-
7.Nathalal Ghelabhai	Rs.90,795/-
8.Pramodkumar Kashiram Thakar	Rs.1,15,207/-
9.Mukundrai Jatashanker,	Rs.62,307/-
10.Udaykumar Jatashanker Zala	Rs.96,000/-

11.Babulal Thakarshi	Rs.85,783/-
12.Mansukh Karsan Shekhda	Rs.78,412/-
13.Shailesh Dhirajlal Sata	Rs.73,028/-
14.Musa Sumar	Rs.1,23,946/-

2. The petitioner is a body corporate established and constituted under the provisions of Section 3 of the Gujarat Agricultural University Act, 1969. The petitioner is an educational institute fully aided by the State Government. It is engaged in the educational activities and imparting education in agriculture and in allied sciences and humanities in the State of Gujarat. The University is having various agricultural projects at different places in the State of Gujarat. For the purpose of discharging its duties and functions under the Act, the petitioner University engages daily rated field labourers for various activities. The State

accords 100% grant to the petitioner University and that all the expenses including the expenses for the purpose of payment of salaries and wages of the employees of the University are being paid from the amount of grant given by the State Government. The State Government is having overall control over the University.

3. It is the case of the petitioner that the petitioner University being a grant-in-aid institute is required to obtain prior approval of the State Government for new recruitment of the employees of the University. All posts are being sanctioned by the State Government and after its sanction the posts are being filled in by the University. The petitioner University is having its own Recruitment Rules which provides designation, qualification, method of recruitment and other terms and conditions of the employment. The pay scale of

the different categories of the employees of the University are being fixed by the State Government from time to time. The respondents No.1 to 14 are daily rated labourers and were working with the petitioner University at Junagadh Campus as daily rated labourers and they were given work as shown below :-

Names	work allotted.
1.Mohanlal Devraj Chauhan	Work-charge Clerk(Electric)
2.Pravin Vasanji	Electrician.
3.Sheilesh Natvarlal Vakharia	Work-charge Clerk (Electric)
4.Maganlal Bhurabhai	Electric Wireman
5.Jamal Savdas Chhuchhar	Oil-man
6.Harsukh Kurji	Helper (Electrical)
7.Nathalal Ghelabhai	Electric Wireman
8.Pramodkumar Kashiram Thakar	Wireman
9.Mukundrai Jatashanker	Helper(Electrical)
10.Udaykumar Jatashanker Zala	Helper(Electrical)
11.Babulal Thakarshi	Helper (Electrical)
12.Mansukh Karsan Shekhda	Helper (Electrical)

13.Shailesh Dhirajlal Sata Helper (Electrical)

14.Musa Sumar Chawkidar.

4. It is also the case of the petitioner that initially the respondent No.1 – Shri Mohan Devraj Chauhan was appointed in the pay scale of Rs.260-400 as work charge clerk, respondent No.2 – Pravin Vasanji Vasvalia was engaged as daily rated labour, respondent No.3 – Saileshkimar N. Vakharia was appointed as work charge clerk (Electric) in the pay scale of Rs.260-400, respondent No.3 – Maganlal B. Pagdal was engaged as Labour in Electric Department on daily rate basis and respondent No.5 – Jagmal Savdas Chhachhar was appointed as Oilman in the pay scale of Rs.210-270 and other respondents were engaged as daily rated labourers in Electric Department of the University.

5. It is also the case of the petitioner that

the qualification cadres of the respondents are as under :-

Sr.No.	Name of post	Pay scale	Qualifications
1.	Electrician	350-550(old) 1200-2040 (Revised)	Diploma or Certificate course passed in Electrical Engineering.
2.	Wireman	260-400(Old) 950-1500 (Revised)	P.W.D.2nd Class Wireman Certificate on year teaching or practical experience
3.	Helper	196-232(Old) 750-940	Candidate must have studied upto 8th Standard Primary School.

6. It is also the case of the petitioner that the respondents were not possessing requisite qualification on the date of their initial entry in the employment or on the day on which they completed 240 days in the respective posts. On behalf of the respondents industrial disputes being Ref.(ITR) Nos.45/86, 9/86 and 166/86 were raised before the Industrial Tribunal at Rajkot and claimed that they should be treated as permanent employees

of the University on their respective posts from the date of their initial entry in service with all consequential benefits at par with regular employees. The Industrial Tribunal, Rajkot, bu its common award dated 16.2.1989 allowed the References and directed the petitioner University to treat all the employees as permanent on their respective posts from their initial date of entry in service. The tribunal further directed to place them in the time scale of respective cadre from the date of their initial appointment.

7. Being aggrieved of the said award of the Industrial Tribunal, the petitioner University preferred a separate writ petition being Special Civil Application Nos.5691/1989, 6352/89 and 6353/89 before this Court and this Court vide its judgment and order dated

19.9.1989 modified the award passed by the Industrial Tribunal to the extent that the respondents workmen will be treated to have been made permanent on completion of 240 days of service from the date of their initial entry in the service of the University with all permanency benefits.

8. Being further aggrieved and dissatisfied by the said judgment and award dated 19.9.1989 passed by this Court, the petitioner University preferred Special Leave Petition being Special Leave Petition No.2303/90 before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India vide its order dated 5.4.1990 dismissed the Special Leave Petition.

9. It is the case of the petitioner that since there were no sanctioned posts and no grant was available, the petitioner University could not

comply with the directions of the Industrial Tribunal and, therefore, the respondent union filed Contempt Petition being MCA No.291/90 before this Court for implementation of the award passed by the Industrial Tribunal, Rajkot. During the pendency of the said Contempt Proceedings, on 14.6.1991, the respondents also filed Recovery Application No.118/91 before the Labour Court, Junagadh under the provisions of Section 33(C)(1) of the Industrial Disputes Act, 1947 for recovery of arrears of Rs.22,49,972/- and Rs.600/- as costs as per award dated 16.12.1989 passed by the Industrial Tribunal, Rajkot, in Ref.Nos.45/86, 9/86 and 166/86.

10. It is also the case of the petitioner that the petitioner University is having its own pay rules, known as 'Gujarat Agricultural University Employees (Revision of Pay) Rules,

19987' . During the pendency of the said recovery application and the contempt application, the petitioner University by its order dated 13.11.91, 15.11.91 and 20.11.91 made all the respondents permanent from the date on which they completed 240 days on their respective posts and pay scales considering their educational qualification respectively. Since the respondent union filed Recovery Application No.118/91 before the Labour Court, Junagadh, for recovery of arrears of Rs.22,49,972/-, the petitioner University filed its written statement and denied the same. The petitioner and the respondents led their oral and documentary evidence in support of their case. The petitioner University was of the view that the Labour Court under the complete misconception about its jurisdiction, on wholly illegal and erroneous approach and without jurisdiction considered the higher pay

scale of the respondent employees and awarded excess amount in favour of the respondents. Being aggrieved by the said award and directions dated 22.10.92 passed by the Labour Court, Junagadh, in Recovery Application No.118/91, the petitioner has filed the present petition praying for quashing and setting aside the said impugned award.

11. The petition was admitted and rule was issued on 13.1.1994. The Court has also stayed the operation and execution of the award. Ad-interim relief granted earlier was confirmed by this Court on 18.4.1994. No reply affidavit has been filed on behalf of the respondents till this date.

12. Mr.D.G.Chauhan, learned advocate appearing for the petitioner University has submitted that the award passed by the Labour Court

suffers from serious infirmities and errors apparent on the face of the record. He has further submitted that the Labour Court has made no genuine attempt to appreciate the impact of the evidence on record and that has resulted in complete miscarriage of justice and making award of excess amount against the petitioner without fixing the pay scale of each employee. He has further submitted that the Labour Court has made out altogether a new case of pay fixation which is not even put forth by the respondents either in their statement of claim or in their evidence and has travelled beyond the pleadings and gave a direction which is without jurisdiction. He has further submitted that the Labour Court has seriously erred in holding that (i) orders Mark 8/1 to 8/10 are not according to qualifications of the respondents (ii) it is proved that the petitioner has not taken care in issuing orders

according to the award (iii) the pay scale shown in the orders are also not according to the award for various respondents, and (iv) it is necessary to modify these orders according to the qualifications of the employees, and the mistake should be rectified and the pay scale should be given according to the statement of applicants, looking to their qualifications. Mr.Chauhan has submitted that the above findings are without jurisdiction and the Labour Curt had exceeded its jurisdiction in modifying the orders and pay scale. He has further submitted that the Labour Court has acted without jurisdiction in making a change in the conditions of service by modifying the order made by the University. It is not open to the Labour Court to do so in execution proceedings under Section 33(C)(1) of the Act.

13. Mr.Chauhan has further submitted that Section

33(C)(1) of the Act contemplates as pre-existing right and the claim must be made within the prescribed period of 1 year. The Labour Court has erred in ignoring the express provisions of law in holding that there is no limitation clause for recovery of the amount under the Act. He has further submitted that the Labour Court has overlooked that the application is made under Section 33(C)(1) of the Act. The proviso to Section 33(C)(1) prescribe a period of 1 year. Therefore, the application is clearly time barred and the Labour Court ought to have dismissed the same. Mr.Chauhan has further submitted that the Labour Court has misred the direction in the award and orders pursuant thereto. Directions indicated in the award are contrary to the finding arrived at by the Labour Court and also contrary to the appointment orders showing the post and corresponding old scale of respondents

at the relevant time and the relevant statutes of universities which are binding on the parties. He has further submitted that reading the award alongwith the relevant documents, record and the statute, the orders absorbing the respondents are correctly made and the impugned order is made without application of mind and mechanically as it is apparent from the plain reading of the impugned award. He has further submitted that mere designation is not decisive. The Court has to go by the work performed and the relevant binding rules, regulations or statutes governing the matter. He has further submitted that any other reading would make that part of the award giving directions wholly without jurisdiction and void altogether, being beyond the terms of reference as there was no demand for classification and no reference was made in that regard.

14. Mr.Chauhan has further submitted that the Labour Court once having held that the pay scale should be given according to their qualifications, the Labour Court ought to have granted the arrears as per the pay scale fixed by the petitioner University. Mr.Chauhan has further submitted that all the employees have been made permanent on their respective posts considering their qualifications and placed them in the pay scale accordingly. The calculations made by the Labour Court is without any basis and without considering the pay scales of the respective posts. The said calculation is made without fixing the pay scale of the employees. The amount awarded to each employee is based on no evidence and without application of mind.

15. Mr.Chauhan has further submitted that subsequently on receiving the grant from the

State Government, in the month of March, 1993, the petitioner University has paid arrears to all the respondents employees on the basis of the pay scale fixed pursuant to the award passed by the Industrial Tribunal, Junagadh. He has, therefore, submitted that after payment of the said amount no grievance of the petitioners did exist and petition should have been allowed on that ground accordingly.

16. Mr.Chauhan has submitted that the respondents have claimed an amount of Rs.22,49,972/- in Recovery Application. The Labour Court has awarded the amount of Rs.12,84,000/-. The petitioner University has already paid an amount of Rs.6,33,435.60 ps. According to the petitioner University, the Labour Court has awarded an excess amount of Rs.6,50,564.40 ps., and that is under challenge in the present petition.

17. In support of his submission Mr.Chauhan has relied on the decision of Hon'ble Supreme Court **in the case of State Bank of India vs. Ram Chandra Dubey and others, reported in (2001) 1 Supreme Court Cases 733**, wherein the Central Government in a reference under Section 10 of ID Act, 1947 referred to the Industrial Tribunal the question of validity of termination of service of certain workmen and the relief they were entitled to. The Tribunal passed an award that the workmen concerned were entitled to reinstatement w.e.f., the date of termination. The award was, however, silent in regard to payment of back wages for a period between the date of termination of the workmen and their reinstatement. Thereafter, the workmen filed an application before the Central Government Industrial Tribunal-cum-Labour Court under Section 33-C(2) of the Act, against the

appellant for computation of the back wages on the basis of the award. The Tribunal-cum-Labour Court allowed the application. A writ petition filed against the said order was dismissed by the High Court on the ground that the award of reinstatement conferred a right for back wages. The said decision of the High Court was challenged before the Hon'ble Supreme Court and allowing the said application the Hon'ble Supreme Court has held that when a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is

gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen. The Supreme Court has further held that the difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case

that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Therefore, the appropriate forum wherein such question of back wages could be decided is only that to whom a reference under Section 10 of the Act is made. Therefore, the High Court ought not to have presumed that the award of the Labour Court for grant of back wages was implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.

18. Mr.Chauhan has further relied on the decision of Himachal Pradesh High Court **in the case of**

Cement Corporation of India vs. Presiding Officer, Labour Court and others, reported in 2004-1 LLJ, 191, wherein the respondent workman filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947. The workman claimed that on the basis of the award by the Arbitrators he was entitled to the benefits as that of regular employees. The Labour Court allowed the claim of the workman. The High Court held that as it was the case of an application under Section 33-C(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction to pass an award as there exists no prior determination or adjudication regarding the entitlement of the workman to the benefits. The award of the Labour Court was therefore set aside and the said application of the work man was dismissed.

19. Based on the aforesaid decisions and

looking to the facts of the present case, Mr.Chauhan has strongly urged that since there was no pre-existing right in favour of the respondent workmen the pay scale fixed by the Labour Court is absolutely illegal and without jurisdiction and hence the award deserves to be quashed and set aside.

20. Though Mr.Y.S.Lakhani, learned advocate has filed his appearance his colleague has mentioned before the Court that he has no instructions in the matter and the Court may decide the matter on its own merits. As stated earlier, no affidavit in reply is filed on behalf of the respondents. The fats stated and averments made in the petition have not been controverted. Even subsequent to the award passed by the Labour Court, the petitioner University has absorbed the respondents on permanent basis and amount of Rs.6,33,435.60 ps

has been paid to them by fixing their pay scale on the basis of rules and regulations of the University. It appears that the respondents might have been satisfied by the said action of the petitioner and possibly for that reason they have not shown any interest in pursuing this matter any further. Be that as it may, the Court is of the view that by virtue of an award passed by the Labour Court on 16.2.1989 in Reference (DRT) Nos.45 of 1986, 9 of 1986 and 166 of 1986, the respondents workmen were entitled to reinstatement with full back wages and continuity of service. However, the amount of back wages has not been determined by the Labour Court. The issue regarding fixation of pay scale was also not before the Labour Court in earlier reference. Without such determination, the respondents workmen have filed Recovery Application No.118 of 1991 under Section 33-C(1) of the Industrial Disputes Act,

claiming an amount of Rs.22,49,972/-. This claim was never adjudicated upon earlier nor there was any finding to that effect by the Labour Court. As per the settled legal position, the Labour Court is not justified in entertaining the said claim in an application filed under Section-33C(1) of the Act. Despite this fact, the Labour Court has awarded an amount of Rs.12,84,000/-. The main challenge of the petitioner University in the present petition is in respect of the relief granted by the Labour Court to the respondents workmen while entertaining the Recovery Application under Section – 33C(1) of the Act. Though the petitioner University has partly complied with the award passed by the Labour Court and the respondents workmen have been made permanent, and an amount of Rs.6,33,435.60 ps has been paid to them. However, the respondent workmen are not entitled to claim any more amount nor

the Labour Court is entitled to award an excess amount of Rs.6,50,564.40 ps., as for this amount, there is no pre existing right in favour of the respondents workmen. The Court, therefore, is of the view that the award passed by the Labour Court to the extent of awarding of an excess amount of Rs.6,50,564.40 ps is required to be quashed and set aside and it is accordingly quashed and set aside. The petition is accordingly allowed and rule is made absolute to the above extent without any order as to costs.

(K. A. PUJ, J.)

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